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8 ENFORCEMENT and UNITED STATES
DEPARTMENT OF HOMELAND SECURITY

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 OAKLAND DIVISION

12 AMERICAN CIVIL LIBERTIES UNION,) CASE NO.: 4:23-cv-03450-DMR
13 Plaintiff,)
14)
15 v.)
16 UNITED STATES IMMIGRATION AND)
17 CUSTOMS ENFORCEMENT and UNITED)
18 STATES DEPARTMENT OF HOMELAND)
SECURITY,)
Defendants,)
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20 I, Shawn O'Donnell, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

21 1. I am the unit chief of U.S. Immigration and Customs Enforcement ("ICE") Office of
22 Acquisition Management ("OAQ"), Detention, Compliance and Removals (DCR) unit. I have held this
23 position since May 24, 2020. My position requires knowledge of ICE detention standards, knowledge of
24 contract management, and ICE standards.

25 2. As the unit chief, my official duties include overseeing and managing multiple teams
26 consisting of section chiefs, Contracting Officers (CO), and Contract Specialists (CS). Each team has a
27 specific area of responsibility that, in total, span the entire continental United States and territories.
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1 3. I make this supplemental declaration in further support of Defendants' Cross-Motion for
2 Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment in the above-captioned
3 action, and in response to the Court's order following the summary judgment hearing on June 27, 2024
4 requesting that Defendants submit a supplemental declaration supporting their claim that the LexisNexis
5 Master Agreement governs the contract between ICE and RELX Inc. for the electronic law library (ECF
6 No. 51). This declaration supplements and amends my prior declaration, which was submitted on
7 February 28, 2024 (ECF No. 42). The statements contained in this declaration are based upon my
8 review of documents kept by ICE in the ordinary course of business, and information provided to me by
9 other ICE employees in the course of my official duties.

10 4. On December 19, 2022, ICE entered into a contract with RELX for a subscription to the
11 LexisNexis Research Service to provide access to legal research materials to detained noncitizens, which
12 includes the provision of offline electronic law library (ELL) materials on electronic hard drives (EHD)
13 (the "RELX Contract"). The offline ELL materials provided by RELX on External Hard Drives (EHD)
14 are hereinafter referred to as the "Offline Lexis Materials."

15 5. Prior to submitting my initial declaration, ICE contacted RELX on February 13, 2024, to
16 request a copy of the most recent version of the Master Agreement. RELX replied on February 13, 2024,
17 and provided the copy of the Master Agreement in pdf format which was attached to my initial declaration
18 as Exhibit A.

19 6. In response to the Court's June 27, 2024 order, I made further inquiries to the contract
20 officer responsible for RELX Contract. We searched for additional records, including any prior
21 agreements or contract drafts, and communications related to the agreement. We also contacted RELX
22 for additional information.

23 7. Based on my additional inquiries, I was able to confirm that the copy of the Master
24 Agreement provided by RELX and previously submitted to the Court is identical to the Master Agreement
25 that is included on each of the EHDs that are provided to ICE by RELX.

26 8. I was also able to confirm that acceptance of the Master Agreement by ICE occurs as part
27 of the installation of the Offline Lexis Materials, which occurs quarterly when updates are provided by
28 RELX. Each time the quarterly updates are received, the Offline Lexis Materials and associated

1 software are installed by an ICE employee at the ICE facility where the Offline Lexis Materials are used.
2 During the installation process, the Master Agreement is displayed and the installer must agree to the
3 terms in order to complete the installation by selecting the option “I accept the terms of the license
4 agreement” and clicking the “Next” button. An option to select “I do not accept the terms of the license
5 agreement” also appears, however, the installation will not proceed if the installer selects that option. It
6 is my understanding that the installer must, and always does, accept the terms of the Master Agreement
7 during the installation process, and that this has been occurring throughout the life of the RELX
8 Contract.

9 9. While conducting these additional inquiries in response to the Court’s comments during
10 the June 27, 2024 hearing, ICE examined an EHD provided by RELX and located the Microsoft Word
11 file containing the Master Agreement, which came preinstalled on the EHD and which appears as part of
12 the installation process. That file contains the complete text of the Master Agreement and shows, on the
13 first page, an image of the acceptance screen that appears during the installation process. A true and
14 correct copy of that Microsoft Word file, which has been printed to pdf, is attached hereto as Exhibit A.
15 I conducted a comparison of the language of Master Agreement contained in the Microsoft Word file
16 attached hereto as Exhibit A, and the copy of the Master Agreement submitted with my prior
17 declaration, and determined that the language is identical.

18 10. After installation, the program provides users with a link where the terms of the Master
19 Agreement are available for viewing. Following the initial acceptance of the Master Agreement during
20 the installation process, however, the program does not again prompt users to affirmatively accept or
21 acknowledge the terms of the Master Agreement. This clarifies and amends paragraph 5 of my prior
22 declaration, which inaccurately stated that each time the Offline Lexis Materials are accessed by a user
23 at an ICE facility, the Master Agreement is displayed and the user must agree to the terms before
24 proceeding.

25 11. It is my understanding based on my inquiries that the Master Agreement has been
26 included with the EHD and each quarterly update provided by RELX dating back to prior contracts
27 between ICE and RELX regarding the Offline Lexis Materials, for which ICE has been contracting with
28

1 RELX (and its predecessor companies) since at least 2012. The Master Agreement continues to be
2 included with the EHD.

3 12. ICE conducted a thorough search for documents reflecting any changes to the Master
4 Agreement over the course of the relationship between ICE and RELX regarding the provision of the
5 Offline Lexis Materials, but did not locate any records reflecting any changes to the Master Agreement.
6 Contracting officers searched for email communications between RELX and ICE and for computer
7 records related to this contract. Based on my experience, it is common for such license agreements
8 relating to services provided by vendors pursuant to government contracts to remain in effect without
9 modification. When modifications to such license agreements are made, vendors typically provide
10 notice of such a change. Based on my inquiries, I am unaware of RELX providing ICE with any such
11 notice regarding changes to the terms of the Master Agreement.

12 13. I declare under penalty of perjury that the foregoing is true and correct to the best of my
13 knowledge and belief.

14 Signed this 5th day of August, 2024.

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